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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-220957.2

DATE: April 14, 1986

MATTER OF: Hispanic Maintenance Services, Inc.--
Request for Reconsideration

DIGEST:

Where amendment revising wage rates has more than a trivial effect on the price of the solicited services, bidder's failure to acknowledge amendment cannot be waived notwithstanding bidder's obligation to pay the revised wage rates under its collective bargaining agreement. In determining materiality of amendment, consideration must be given to actual and potential adverse impact of amendment on competition and prejudice to bidders.

Hispanic Maintenance Services, Inc. (Hispanic), requests reconsideration of our decision in Hispanic Maintenance Services, Inc., B-220957, Feb. 7, 1986, 86-1 C.P.D. ¶ ____.

The invitation for bids (IFB), issued by the General Services Administration (GSA), solicited bids for janitorial services for the United States Courthouse Building, Hato Rey, Puerto Rico. We held that GSA properly rejected Hispanic's low bid for failing to acknowledge an amendment which incorporated an increased wage rate determination. We found that notwithstanding the fact that the revised wage rate determination was based on Hispanic's (the incumbent contractor) collective bargaining agreement, the firm's bid could not be accepted because the amendment's effect on bid price was not clearly de minimus.

On reconsideration, Hispanic argues that the amendment had no effect on its price because the firm is legally obligated under its collective bargaining agreement to pay the wage rates required by the amendment. In this regard,

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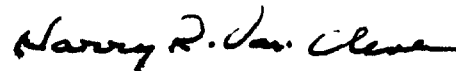
Hispanic maintains that it may be reasonable to consider a wage rate amendment's effect on price where a bidder is not obligated under a collective bargaining agreement to pay the wage rates required by the amendment. However, Hispanic asserts that where, as here, Hispanic is obligated to pay the revised wage rates, its failure to acknowledge the amendment should be waived.

In our prior decision, we explained that in some very limited circumstances, not in the bidder's control, a bidder can cure its failure to acknowledge a wage rate amendment after bid opening. See Brutoco Engineering & Constr., Inc., 62 Comp. Gen. 111 (1983), 83-1 C.P.D. ¶ 9; Vector Telcom, Inc., B-216008, Oct. 23, 1984, 84-2 C.P.D. ¶ 452. We have held that the failure to formally acknowledge a wage rate amendment may be cured after bid opening where the impact of the wage rate amendment on bid price is minimal and there is a significant difference between the bid in question and the next low bid and the bidder is otherwise obligated under a collective bargaining agreement to pay the wage rates in the amendment. Brutoco Engineering & Constr., Inc., 62 Comp. Gen. 111, supra; Vector Telcom, Inc., B-216008, supra.

Essentially, Hispanic contends that because it is obligated under its collective bargaining agreement to pay the higher wage rates required by the amendment, its failure to acknowledge the amendment can be waived. Hispanic believes that in these circumstances, we need not consider whether the impact of the amendment on price is de minimus since Hispanic's price took into consideration the wage rates in the amendment. We disagree.

The Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.405 (1984), permits waiver or correction of a bidder's failure to acknowledge an amendment as a minor informality only where the amendment has no more than "a negligible effect on price quantity, quality or delivery of the item bid upon." Thus, the FAR requires an inquiry into the materiality of the amendment. This is because waiver or correction of a bidder's failure to acknowledge an amendment which has more than a negligible effect on the price, quantity, quality or delivery terms of the procurement would be prejudicial to bidders who bid on the basis of the amended solicitation and, thus, adversely affect competition. Brutoco Engineering & Constr., Inc., 62 Comp. Gen. 111, supra; 53 Comp. Gen. 64 (1973).

Here, the possibility that the amendment may not have had any impact on Hispanic's bid price because of its collective bargaining agreement does not establish that the amendment is not material. As explained in our decision, the amendment's impact on the price of the solicited services is about \$28,000. Hispanic does not dispute this. Since this amount is more than 50 percent of the difference between the two low acceptable bids, the effect of the amendment on the competitive bidding system cannot be considered minor. Mike Vanebo, 64 Comp. Gen. 780 (1985), 85-2 C.P.D. ¶ 184; Brutoco Engineering & Constr., Inc., 62 Comp. Gen. 111, supra. Therefore, Hispanic's failure to acknowledge the amendment cannot be cured and we affirm our prior decision.



Harry R. Van Cleve
General Counsel